

MONTANA LEGISLATIVE HISTORY

Chapter 180 19 61

Bill H 135 S _____ Original bill & history C

H. Committee on Highways

Hearing Date(s) 1-17 _____ C

Subs Comm. 1-19 _____ C

Stand. Comm. 1-20 _____ C

Subs comm. 1-21 _____ C

Subs Comm. 1-24 _____ C

Subs comm. 1-27 _____ C

DATE OUT: Stand. comm. 1-30

S. Committee on Highways

Hearing Date(s) 2-21 8:00 am C

2-21 12:45 PM C

DATE OUT: 2-23 _____ C

_____ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

House bills on highways

HB 39	Jensen(Lake) et al	Exemptions from the State Gasoline Tax-counties, school districts, etc.
HB 50	Broeder	Foreign licensed motor vehicles
HB 59	Leuthold, Kolar, Pierce	Speed restrictions--establishing a basic daylight speed limit
HB 68	Lucas et al	Registration fees of motor vehicles, disposition and provisions of such fun
HB 124	Eskildsen et al	Seeding of perennial grass covers on newly disturbed right-of-ways area
HB 132	Conklin et al	Tax on diesel fuel and other volatile liquids--exemptions from said tax
HB 133	Conklin et al	Gasoline Dealers' License tax--exemptions, issuance & refunds on
HB 134	Blewett et al	Estates in land which may be acquired by condemnations--provisions thereto
HB 135	Blewett et al	Relating to the procurement of rights of way and other properties - specifications and provisions thereto
HB 136	McOmber et al	Procedure on refund of gasoline license tax - providing for exemptions on
HB 138	McOmber, Raundal & Leuthold	Distribution of proceeds from tax funds--increasing amount deposited to State Highway Fund
HB 139	Picard et al	Dumping of garbage upon or near highways--to increase the fine imposed for

January 17, 1961

The Highway Committee met at 11:00 A.M. with a quorum present and Chairman Broeder presiding.

Chairman Broeder said quite a few people wanted to be heard on House Bills 134 and 135.

Those present as proponents of the bills were:

Joe Crosswhite, IVOE, Local 371

Henry Loble, Attorney for the Montana Automobile Association

Joe Dzivi, representing the Operating Engineers

A.C. Muraish, Operating Engineers, Butte

Al Erickson, Montana Automobile Association

H. O. Bell, Montana Automobile Association

Joe Markham, Montana Automobile Association

Charles P. Cardon, Montana Automobile Association

R.V. McCullough, Montana Equip. Distributors

Ed Cozad, International Assoc. of Machinists

Charles Crain, Montana Automobile Association

Mr. George Gordon, Operating Engineers of Local 377

Mr. E. R. Britton, representing labor unions of Great Falls

Mr. Leif Erickson, representing the Yellowstone Valley Protective Association, appeared as an opponent.

Mr. Henry Loble, representing the Montana Contractors' Assoc. also, introduced the different visitors after he had explained the bills. He said the bills increases the powers of the Montana Highway Commission and deals with the legal procedure of condemnation of private property. He pointed out that the excessive prices paid for rights of way decreased the amount of money which is available for actual highway construction. He felt the bills were necessary to expedite highway construction in the state.

Mr. Jim Umber, Pres. of the Montana AF-CIO said their particular interest as labor is that we get some of this highway work going as soon as possible. We have many people without jobs and employment had not reached the peak that they had thought it would. The highway program has not been started. He was not sure this was the correct type of legislation he was merely asking that people be put back to work.

Mr. Joe Crosswife, Vice-president of the Montana AF-CIO speaking in favor of these highway bills to expedite the highway construction, said he was in full agreement with the contractors. In his particular area, the money had been allocated but because of court procedures in obtaining right-of-way the work had not been started and he hoped the contracts would be let next year. He believed the land owners would be more satisfied with the procedure as set forth in these bills.

Mr. Joe Dzivi, head of the Operating Engineers, said he thought the bills were good bills and they were needed to expedite the road building program in Montana. At the present time, there

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was a lot of red tape necessary to obtain right-of-way and the highway program was bogged down because of it. He thought the necessary provisions for removing the red tape were in the bills and he hoped the committee would pass the bills.

Mr. Al Erickson, Montana Automobile Association, stated his Association had always been interested in good highways and in improving highways. The big stumbling block had been the acquisition of right-of-way and these bills would remove those obstacles. The survey he had conducted last summer indicated his members wanted the highway program now.

Mr. H. O. Bell, Montana Automobile Association President, said he thought the bills were progressive legislation and he hoped the committee would see their way to passing favorably on this legislation.

Mr. Joe Markham, Manager of the Montana Automobile Association, explained briefly the organization of his Association and said many cards had been received in support of their campaign for speeding up highway construction and said he hoped the committee would pass the two bills.

Mr. Charles Crain, local director of the Montana Automobile Association, said he favored these two bills.

Mr. Cozatt, representing the machinist's union, said they were interested in these two bills.

Mr. Loble said that he and Mr. Clayton Herron, Attorney for the Highway Commission, had worked together on these two bills and thought it would protect the landowners and there was nothing in them that could be construed as the quick-take method that the federal government used.

Mr. Herron stated there wasn't anything as important to the highway program as a very consideration of House Bills 134 and 135. He explained the bills further and the problems the department has under the present law and stated these bills were the same as the California law which had been in effect since 1935 and there had been no legal action over right-of-way in California since the enactment of their law.

Mr. Lou Chittum, Highway Chairman of the Right-of-Way Program, further explained the bills and the provision for taking right-of-way for roadside parks and rest areas had been included in the bill.

Mr. George Gordon, Operating Engineers of Local 377 and Mr. E. R. Britton, representing the labor unions in Great Falls were introduced as proponents of the bills.

Attorney Leif Erickson, Attorney for the Yellowstone Valley Protective Association, spoke in opposition to the bills, declaring they were unconstitutional. He particularly objected to the

Jan. 17, 1961

"conclusive evidence" clause which gave the highway department more power than the courts of Montana. He also stated the provision for withdrawing part of the award money and requiring a bond for the withdrawing of additional funds was not fair because it would be practically impossible to obtain a bond for such purposes because the price of said bond would be prohibitive. He felt the present statutes governing obtaining right-of-way were sufficient if the highway department handled their cases correctly.

Questions from Committee members followed which were answered by the visitors, and then the visitors were excused.

Rep. Schye said he knew the Committee would not like to see the federal government step in to acquire right-of-way which is what would happen if the problem weren't solved in the immediate future. The "quick-take" method used by the federal government was very quick and very effective but he certainly didn't like its method.

Rep. Judge suggested the bills be put in a sub-committee for further study. Chairman Broeder appointed Rep. Reinecke as chairman and Rep. Lewis and Rep. Schye as members.

The meeting was adjourned at 1:15 P.M.

Broeder

Fred O. Broeder, Chairman

HMW

January 19, 1961

SUB-COMMITTEE OF HIGHWAYS

The Sub-Committee of Highways held a short meeting at 12:30 P.M., on Thursday, January 19th, in Room 420, to consider House Bills No. 134 and No. 135. Members present were Mr. Reinecke, Chairman, Mr. Lewis and Mr. Schye.

Lawyers Clayton Herron, Henry Loble, Leif Erickson and J. R. Richards appeared before the Committee to explain the amendments they had drawn up for House Bill No. 134. A copy of these amendments was given to Chairman Reinecke.

One amendment was on page 2, line 10, in title of bill itself.

On page 6 in Section 6 of the bill itself, on line 25, after the word "follows", all the rest of Section 6 was deleted and a complete rewrite was substituted.

On page 10, line 4, the word "the" was deleted, and also on page 10, line 5, the word "proceedings" was deleted and substituted therefor were the words, "values of the land."

Mr. Erickson said he thought the amendment to Section 6 was too long and cumbersome and some parts were bad.

On page 17, line 15, it was decided that the words, "all or any part of" should be underlined.

The lawyers were excused.

Sub-Committee then discussed House Bill No. 135. Thought parts of the bill on page 2 of mimeographed copy should be changed and amended.

Mr. Lewis stated he thought both bills were the poorest bills he has ever seen and won't do a thing. It was decided to bring these bills up Friday morning for discussion at the regular Highway meeting.

Meeting adjourned.

Fred W. Reinecke, Chairman

January 20, 1961

A meeting of the Highways Committee was held at 1:15 with a quorum present and Chairman Broeder presiding.

Chairman Broeder stated that because of the short time available for the meeting and that out-of-town people were wanting to be heard on H.B. 68 he would allow them to speak on the bill and others that were here could be heard at a later date and that no action would be taken on the bills.

Mr. Pat Hooks, Attorney for the Montana Municipal League, introduced the proponents for the bill: Mayor Cash, Missoula; Mayor Klabdashor, Billings; Mayor Parker, Laurel; Mr. Purvis, City Engineer, Billings; and Rep. Lucas, one of the authors of the bill.

H.B. 68 will allow the cities to keep 50% of the license fee collected from owners of cars and trucks that resided in the city or town limits. At the present time, Anaconda, Butte and Walkerville are participating in license fees and the proponents felt all cities and towns should be able to do so and the bill would delete population requirements and size of cities in square miles from the present law, thus allowing all cities and towns to participate. Many of the counties are not levying the permissible 10-mill levy at the present while most cities were and had been for some time. All said it had been impossible to maintain their streets on the funds that were available under the present laws. After answering questions from committee members the visitors were excused.

Rep. Reinecke asked for an extension of time for the subcommittee to report on H.B. 134 and H.B. 135, which was granted.

Rep. McOmber made the motion to adjourn, seconded by Rep. Leuthold, and the motion carried. Meeting adjourned at 1:35 P.M.

Broeder
Fred O. Broeder, Chairman

January 21, 1961

A meeting of the Sub-Committee on H.B. 134 and H.B.135 was held at recess with Chairman Reinecke presiding.

Attorneys Henry Loble, Clayton Herron, and Rep. Blewett were present to meet with the committee.

Rep. Blewett offered the following amendment to H.B. 134: Amend the original bill, page 17, line 24, following the word "fendant" by striking the remainder of line 24, all of line 25, and by inserting in lieu thereof the following:

"of more than fifty per cent (50%) of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of said fifty per cent (50%), with sureties"

Chairman Reinecke moved that this amendment be adopted, seconded by Rep. Schye and Rep. Lewis said he preferred not to vote on it at the present time and asked that he might have more time to study the bill and the amendment.

Attorney Loble presented amendments to H.B. 135 which were considered. Rep. Schye moved that the amendments be approved, seconded by Rep. Reinecke and Rep. Lewis stated that he did not prefer to vote until he had more time to study them.

Attorney Loble then presented amendments to H.B. 134 which were studied. The sub-committee agreed to have a brief meeting on Monday to act on the amendments.

Attorney Loble left copies of his amendments with the sub-committee and the secretary was instructed to type copies of Rep. Blewett's amendments for each of the men present and to attach the amendments proposed by Attorney Loble with the committee minutes. The members of the committee agreed to meet Monday.

The meeting was adjourned at 1:15.

Fred W. Reinecke

January 24, 1961

The sub-committee of the Highways Committee to study H.B. 134 and H.B. 135 met at 4:40 with all members present and Rep. Reinecke presiding.

Attorney Loble attended to represent the Montana Contractors' Association and the Montana Automobile Association. Attorney Jerrold Richards, partner in the Erickson-Richards law firm, was present to represent the Montana and the Yellowstone Protective Associations as Mr. Leif Erickson was unable to attend.

Attorney Richards objected to the 50% withdrawal before a bond was required. He felt that certainly 75% should be permitted. He stated that it was practically impossible to obtain a bond for such purposes as required in H.B. 134. He said there was just one instance in which the owner had been granted less by the court than the highway commission had allowed.

Rep. Schye said he was not in favor of cheating the owner but he felt that 50% was sufficient withdrawal to be allowed without bonding.

After further discussion as to how many cases the owner had been granted less by the court than the highway commission had offered, Rep. Schye stated that he would like to discuss the matter of bonding and withdrawal with the Highways Committee members. Rep. Lewis agreed that it would be a good idea. The visitors were excused.

Rep. Lewis again stated that he did not like either of the two bills. He did not think the departments and bureaus of the state or federal government should be granted any more power-- he felt they had too much power already. He thought the fault lay with the administration of the existing laws and he didn't think giving the highway commission more power would be good.

Rep. Schye stated he didn't like the bills either but something had to be done to get the road construction started and he certainly did not want to see the federal government take over the acquisition of right-of-way.

The members agreed they would like to hear a discussion of these two bills by the entire committee and the meeting was adjourned at 5:00 P.M.

Fred W. Reinecke

Fred W. Reinecke

January 27, 1961

The sub-committee studying H.B. 134 and H.B. 135 met at 4:30 and went over the proposed amendments to the two bills and checked them all over.

Rep. Lewis stated that he still didn't approve of either of the two bills and the other two members decided that they would report back to the committee without recommendation and present the amendments and the brief to the committee.

The meeting was adjourned at 4:45.

Fred W. Reinecke

Fred W. Reinecke, Chairman

HMW

January 30, 1961

The Highways Committee met at 12:30 with a quorum present and Chairman Broeder presided.

Chairman Broeder stated that H.B. 68 had been considered at the last meeting but the authors had asked it be reconsidered by the Committee. Rep. Schwinden moved that the Committee reconsider its action on H.B. 68, seconded by Rep. Leuthold and the motion carried. The Chairman said the proponents asked if the Committee would consider 25% of the license fees to go to the city street fund. Rep. Schye moved that a substitute bill incorporating the 25% be drawn and passed by the Committee but that H.B. 68 do not pass, seconded by Rep. Leuthold and the motion carried.

Rep. Reinecke reported on H.B. 134 and H.B. 135 as Chairman of the sub-committee. He stated they had worked very hard on the two bills and had come in with amendments and had agreed to bring the bills back to the Committee without recommendation. Chairman Broeder said the Attorneys for the proponents and the opponents of the bills had agreed to the amendments.

Rep. Blewett was present and went over the proposed amendments explaining each one in detail and stated that the bills were introduced by request of the highway department and had met with a great deal of opposition, especially to the "conclusive evidence" clause. He found that it would be almost impossible to obtain bond for purposes for which the bill required surety and so asked for the amendment increasing the amount of money which could be withdrawn without requiring bond. He also stated that H.B. 408 would be unnecessary if H.B. 134 and H.B. 135 were passed. He was then excused.

Attorneys Herron and Strobe from the State Highway Department remained to explain the bills more in detail. Atty. Herron stated the proposed amendments seemed to carry out the desires of the majority of the people and were therefore agreeable to him.

Rep. Schwinden moved adoption of the amendment to the title of H.B. 135, seconded by Rep. Pierce, and the motion carried.

Rep. Schwinden moved adoption of the second amendment, seconded by Rep. Bentz and the motion carried.

Rep. Seymour moved adoption of amendment three, seconded by Rep. Lundgren and the motion carried.

Rep. Lewis asked the highway attorney to explain the procedure in taking gravel pits which Atty. Herron explained to the Committee.

Rep. Lundgren moved adoption of the fourth amendment, seconded by Rep. Lundgren and the motion carried.

Rep. Bentz moved as amended, that H.B. 135 do pass, seconded by Rep. Seymour and the motion carried.

The Committee carefully considered each change to H.B. 134. Rep. Reinecke moved that H.B. 134 do not pass, but that a substitute H.B. 134 incorporating the changes do pass, seconded by Rep. Seymour. Rep. Lewis said all the bills would do would strengthen the power of the Highway Department and he didn't think the Department needed any more power. He thought the threat of the federal government taking over obtaining right-of-way was a poor excuse for passing legislation of this type. Rep. Reinecke's motion passed with 2 opposing votes.

Chairman Broeder stated that Rep. Eskildsen had presented the wrong bill and had brought in a Sub. H.B. 124 which was the bill he had intended for introduction in the first place. Rep. Leuthold moved that H.B. 124 do not pass, but that Sub. H.B. 124 do pass, seconded by Rep. McOmber and the motion carried.

Rep. Leuthold reported on the gas refund bills (39, 132, 133, 136, 138) and Rep. Leuthold moved that H.B. 39 do not pass, seconded by Rep. Seymour and the motion carried.

Rep. Leuthold moved to amend H.B. 133, seconded by Rep. McOmber and the motion carried. Rep. Leuthold then moved as amended, H.B. 133 do pass, seconded by Rep. Seymour and the motion carried.

Rep. Leuthold moved amendments to H.B. 136 but there was not sufficient time to finish his report.

Rep. Bentz moved to adjourn, seconded by Rep. Laas and the motion carried. The meeting was adjourned at 2:00 P.M.

Broeder

Fred O. Broeder, Chairman

January 30, 1961

MR. SPEAKER:

We, your Committee on Highways having had under consideration House Bill No. 135

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 32-1015 OF THE REVISED CODES OF MONTANA RELATING TO THE PROCUREMENT OF RIGHTS OF WAY AND OTHER PROPERTIES; SPECIFYING THE PURPOSES FOR WHICH LAND AND OTHER REAL PROPERTY MAY BE ACQUIRED BY THE STATE HIGHWAY COMMISSION; AUTHORIZING THE STATE HIGHWAY COMMISSION TO ACQUIRE LANDS OR OTHER REAL PROPERTY BY PURCHASE OR EXCHANGE; AUTHORIZING THE STATE HIGHWAY COMMISSION TO AUTHORIZE PROCEEDINGS IN CONDEMNATION FOR THE ACQUISITION OF LANDS OR OTHER REAL PROPERTY; PROVIDING THAT THE RESOLUTION OF THE STATE HIGHWAY COMMISSION SHALL BE CONCLUSIVE AS TO THE NECESSITY OF HIGHWAYS AND PROPERTY REQUIRED THEREFOR AND AS TO PROPER PLANNING AND LOCATION OF STATE HIGHWAYS; PROVIDING FOR THE ACQUISITION OF LANDS OR OTHER REAL PROPERTY FOR PRESENT OR FUTURE HIGHWAY NEEDS; AUTHORIZING THE STATE HIGHWAY COMMISSION TO LEASE LANDS OR OTHER REAL PROPERTY; PROVIDING THAT ACQUISITION OF RIGHT-OF-WAY BY STATE HIGHWAY COMMISSION INCLUDES THE RIGHT TO USE OR DISPOSE OF GRAVEL OR OTHER ROAD BUILDING MATERIALS LOCATED WITHIN SUCH RIGHT-OF-WAY; REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HEREWITH; AND PROVIDING THAT THIS ACT BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE AND APPROVAL."

Respectfully report as follows: That House Bill No. 135

Be amended as follows:

On Page 1, in the title, at line 16 of the original bill, by deleting therefrom all material in such line appearing after the word "SHALL" and by substituting in lieu thereof the following: "CREATE A DISPUTABLE PRESUMPTION AS TO THE PUBLIC NECESSITY OF HIGHWAYS."

On Page 2, at line 21, by adding, after the words "authorized herein" the following: "provided that the same shall not be acquired for such a purpose by condemnation procedures."

On Page 2, at line 32, by deleting the comma and substituting a period (.) and by deleting all material therein appearing after, and including, the word "or".

On Page 3, at line 1, by deleting the entire of said line 1.

On Page 3, at line 4, by deleting therefrom the words "scenic beauty and"

On Page 4, at line 9, by deleting the entire of said line and by substituting in lieu thereof, the following "such resolution of the commission shall create and establish a disputable presumption"

And as amended,

DO PASS

Fred O. Broeder, Chairman

SENATE COMMITTEE ON HIGHWAYS AND

	BILL NO.		ENTER COM	OUT OF COM	PASS	DO NOT PASS
37	HB 67	special vehicle fees	Jan. 28	Feb. 11		
38	HB 72	"yield" signs	Jan 28	Feb. 24		
39	Sub HB 50	reciprocity on motor vehicles	Jan. 30	Feb 11		
40	HB 85	motorists' approval	Jan. 27	Feb. 11		
41	HB 59	speed limit	Feb. 2	—		
42	HB 133	except. motor vehicles	Feb. 6	Feb. 16		
43	Sub. HB 124	grasses	Feb. 4	Feb. 24		
44	HJR 5	bridges	Feb 4	Feb. 16		
45	HB 132	Exempt school district	Feb. 7	Feb. 16		
46	HB 182	"yield"	Feb. 7	Feb. 24		
47	Sub. HB 68	25% increase in tolls	Feb. 7	Local Gov't Machinery		
48	HB 138	reg. w.	Feb. 9	1/2 per 100 increase		
49	HB 328	220 permits	Feb. 9	Feb. 23		
50	Sub. HB 134	reg. w.	Feb 10	refer. to committee		
51	Sub. HB 401	reg. w.	Feb 10	Feb. 24 Feb. 21		
52	HB 262	bus stop across mo.	Feb. 15	—		
53	HB 342	proportion of	Feb. 15	refer. to Finance & Claims		
		Continued				

February 21, 1961

The Senate Committee on Highways and Transportation met at 8:00 a.m., Tuesday, February 21, 1961, in Room 407, with a quorum present. Chairman Bovey presided.

The purpose of the meeting was to consider House Bills 134 and 135, and the following persons appeared:

Proponents - Mr. Henry Loble, Helena attorney,
 representing the Montana Automobile Assn

 Mr. Joe Markham, manager of the Montana
 Automobile Association

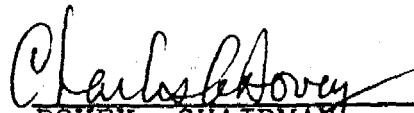
 Mr. Joe Dzivi, international representative
 for the Operating Engineers of Kalispell,
 Montana

 Mr. Louis Chitham, right-of-way engineer for
 the Montana Highway Department

Opponent - Mrs. Bernice Kingsbury, of Pondera County

Mr. Loble presented explanatory material on both the bills, and questions were asked by committee members of the witnesses. Also answering questions was Mr. Clayton Herron, attorney for the Montana Highway Department.

At 10:00 a.m., the meeting adjourned.


BOVEY, CHAIRMAN

February 21, 1961

The Senate Committee on Highways and Transportation met at 12:45 p.m., Tuesday, February 21, 1961, in Room 402, with Chairman Bovey presiding. A quorum was present.

The chairman announced that the committee still has under consideration sixteen bills, including House Bills 132 and 133, on which a postponement in submitting the committee reports had been requested.

After discussing House Bills 132 and 133 once again, Senator Cole moved that House Bill 133 be not concurred in. The motion, seconded by Senator Anderson, carried unanimously.

Senator Harken then moved that Senate Bill 132 be not concurred in. This motion, seconded by Senator Cole, carried unanimously.

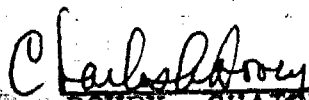
Senator Harken reported on House Bills 134 and 135, and Senator Sagunsky then moved that they be referred to the Judiciary Committee. Senator McGowan seconded the motion, and it carried.

After considerable discussion of Substitute House Bill 401, including the duplication of material in section 4, the disposition of fines, the length provisions, and the lack of penalty in the lower brackets on overweights, it was moved by Senator Sagunsky that Substitute House Bill 401 be not concurred in. Senator McGowan seconded the motion and it carried.

Mr. Elmer Schye, representative from Meagher County, appeared as a proponent of House Bill 398.

Mr. Fred Broeder, representative from Flathead County, appeared as a proponent of House Bill 323. He agreed to draw up amendments to the bill and resubmit it to the committee.

At 2:00 p.m., the meeting adjourned.


BOVEY, CHAIRMAN

February 23, 1961.

SENATE COMMITTEE ON JUDICIARY

The meeting of the Judiciary Committee was called to order by Chairman, Senator Mahone, at 8:30 A.M. on February 23, 1961. The following committee members were present:

Senators: Mahoney, Dussault, Grieve, McDonnell, Harken, McKenna, McKeon, Cumming and Cashmore.

Bills presented were:

H.B. 134 - Harken made the motion that H.B. #134 be not concurred in but that Senate Sub. for Sub. H. #134 do pass. Seconded by McDonnell. Motion carried and so ordered.

#135 - Dussault made the motion that HB135 be not concurred in but that Senate Sub House Bill #135 do pass. Harken seconded the motion. Motion carried and so ordered.

#192 - Rep. Bush, Missoula met with the committee.

#224 - Motion made and seconded that this bill be not concurred in. Motion carried and so ordered.

#102 - Motion made and seconded that this bill be not concurred in. Motion carried and so ordered.

#406 - Motion made and seconded that this bill be not concurred in. Motion carried and so ordered.

#388 - Motion made and seconded that this bill be concurred in. Motion carried and so ordered.

#355 - It was moved and seconded that this

February 23, 1941

MR. PRESIDENT:

We, your Committee on Judiciary

having had under consideration House Bill No. 135

"AN ACT TO AMEND SECTION 32-1015 OF THE REVISED CODES OF MONTANA RELATING TO THE PROCUREMENT OF RIGHTS OF WAY AND OTHER PROPERTIES; SPECIFYING THE PURPOSES FOR WHICH RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY MAY BE ACQUIRED BY THE STATE HIGHWAY COMMISSION; AUTHORIZING THE STATE HIGHWAY COMMISSION TO ACQUIRE RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY BY PURCHASE OR EXCHANGE; AUTHORIZING THE STATE HIGHWAY COMMISSION TO AUTHORIZE PROCEEDINGS IN CONDEMNATION FOR THE ACQUISITION OF RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY, INCLUDING OIL, GAS AND MINERAL RIGHTS; PROVIDING THAT THE EXECUTION OF THE STATE HIGHWAY COMMISSION SHALL CREATE A DISPUTABLE PRESUMPTION AS TO THE PUBLIC NECESSITY OF HIGHWAYS AND PROPERTY REQUIRING THEREON AND AS TO PROPER PLANNING AND LOCATION OF STATE HIGHWAYS; PROVIDING FOR THE ACQUISITION OF RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY FOR EXISTING OR FUTURE HIGHWAY NEEDS; AUTHORIZING THE STATE

Respectfully reports as follows: That ~~the following~~ Bill No. ~~XXXXXX~~

HIGHWAY COMMISSION TO LEASE EASEMENTS OR OTHER REAL PROPERTY; PROVIDING THAT ACQUISITION OF RIGHTS OF WAY BY STATE HIGHWAY COMMISSION INCLUDES THE RIGHT TO USE OR DISPOSE OF GRAVEL OR OTHER ROAD BUILDING MATERIALS LOCATED WITHIN SUCH RIGHTS OF WAY; REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HERewith; AND PROVIDING THAT THIS ACT BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE AND APPROVAL."

Respectfully report as follows: That House Bill No. 135

Be not concurred in. But that

Senate Sub. House Bill #135

"AN ACT TO AMEND SECTION 32-1015 OF THE REVISED CODES OF MONTANA RELATING TO THE PROCUREMENT OF RIGHTS OF WAY AND OTHER PROPERTIES; SPECIFYING THE PURPOSES FOR WHICH RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY MAY BE ACQUIRED BY THE STATE HIGHWAY COMMISSION; AUTHORIZING THE STATE HIGHWAY COMMISSION TO ACQUIRE RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY BY PURCHASE OR EXCHANGE; AUTHORIZING THE STATE HIGHWAY COMMISSION TO AUTHORIZE PROCEEDINGS IN CONDEMNATION FOR THE ACQUISITION OF RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY, INCLUDING OIL, GAS AND MINERAL RIGHTS; PROVIDING THAT THE EXECUTION OF THE STATE HIGHWAY COMMISSION SHALL CREATE A DISPUTABLE PRESUMPTION AS TO THE PUBLIC NECESSITY OF HIGHWAYS AND PROPERTY REQUIRING THEREON AND AS TO PROPER PLANNING AND LOCATION OF STATE HIGHWAYS; PROVIDING FOR THE ACQUISITION OF RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY FOR EXISTING OR FUTURE HIGHWAY NEEDS; AUTHORIZING THE STATE HIGHWAY COMMISSION TO LEASE UNOCCUPIED PORTIONS OF INTERSTATE RIGHTS OF WAY; PROVIDING THAT ACQUISITION OF RIGHTS OF WAY BY STATE HIGHWAY COMMISSION INCLUDES THE RIGHT TO USE OR DISPOSE OF GRAVEL OR OTHER ROAD BUILDING MATERIALS LOCATED WITHIN SUCH RIGHTS OF WAY; REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT

UM-Q-36712

HERewith; AND PROVIDING THAT THIS ACT BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE AND APPROVAL."

DO PASS.

Chairman

IN THE SENATE

February 23, 1961

Committee recommends that Senate substitute for House Bill No. 135 do pass. Report adopted. Referred to Bills Committee for Printing.

February 24, 1961

Reported correctly printed. Report adopted. Referred to General File.

February 25, 1961

Recommended favorable by Committee of the Whole. Report adopted. Placed on Calendar for Third Reading.

On motion rules suspended. Bill referred to Calendar for Third Reading.

Read third time and passed. Title and history agreed to. Transmitted to House for concurrence.

IN THE HOUSE

February 26, 1961

Referred to General Orders for concurrence.

Committee of the Whole recommend that bill be concurred in. Report adopted and Bill referred to Calendar for Third Reading.

February 27, 1961

Senate amendments concurred in on Third Reading. Referred to Committee on Bills for Enrolling.

Reported correctly enrolled.

SENATE SUBSTITUTE FOR HOUSE BILL NO. 135

INTRODUCED BY JUDICIARY COMMITTEE

AN ACT TO AMEND SECTION 32-1615 OF THE REVISED CODES OF MONTANA RELATING TO THE PROCUREMENT OF RIGHTS OF WAY AND OTHER PROPERTIES; SPECIFYING THE PURPOSES FOR WHICH RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY MAY BE ACQUIRED BY THE STATE HIGHWAY COMMISSION; AUTHORIZING THE STATE HIGHWAY COMMISSION TO ACQUIRE RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY BY PURCHASE OR EXCHANGE; AUTHORIZING THE STATE HIGHWAY COMMISSION TO AUTHORIZE PROCEEDINGS IN CONDEMNATION FOR THE ACQUISITION OF RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY, EXCLUDING OIL, GAS AND MINERAL RIGHTS; PROVIDING THAT THE RESOLUTION OF THE STATE HIGHWAY COMMISSION SHALL CREATE A DISPUTABLE PRESUMPTION AS TO THE PUBLIC NECESSITY OF HIGHWAYS AND PROPERTY REQUIRED THEREFOR AND AS TO PROPER PLANNING AND LOCATION OF STATE HIGHWAYS; PROVIDING FOR THE ACQUISITION OF RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY FOR PRESENT OR REASONABLY FORSEEABLE FUTURE HIGHWAY NEEDS; AUTHORIZING THE STATE HIGHWAY COMMISSION TO LEASE UNUSED PORTIONS OF INTERSTATE RIGHTS OF WAY; PROVIDING THAT ACQUISITION OF RIGHTS OF WAY BY STATE HIGHWAY COMMISSION INCLUDES THE RIGHT TO USE OR DISPOSE OF GRAVEL OR OTHER ROAD BUILDING MATERIALS LOCATED WITHIN SUCH RIGHTS OF WAY; REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HEREWITH; AND PROVIDING THAT THIS ACT BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE AND APPROVAL.

—AN ACT TO AMEND SECTION 32-1615 OF THE REVISED CODES OF—
—MONTANA RELATING TO THE PROCUREMENT OF RIGHTS OF WAY AND—
—OTHER PROPERTIES; SPECIFYING THE PURPOSES FOR WHICH RIGHTS—
—OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY MAY BE—
—ACQUIRED BY THE STATE HIGHWAY COMMISSION; AUTHORIZING THE—
—STATE HIGHWAY COMMISSION TO ACQUIRE RIGHTS OF WAY, EASEMENTS,
—LANDS OR OTHER REAL PROPERTY BY PURCHASE OR EXCHANGE;
—AUTHORIZING THE STATE HIGHWAY COMMISSION TO AUTHORIZE—
—PROCEEDINGS IN CONDEMNATION FOR THE ACQUISITION OF RIGHTS—
—OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY, EXCLUDING—
—OIL, GAS AND MINERAL RIGHTS; PROVIDING THAT THE RESOLUTION OF—
—THE STATE HIGHWAY COMMISSION SHALL CREATE A DISPUTABLE—
—PRESUMPTION AS TO THE PUBLIC NECESSITY OF HIGHWAYS AND—
—PROPERTY REQUIRED THEREFOR AND AS TO PROPER PLANNING AND—
—LOCATION OF STATE HIGHWAYS; PROVIDING FOR THE ACQUISITION—
—OF RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY—
—FOR PRESENT OR REASONABLY FORSEEABLE FUTURE HIGHWAY NEEDS;
—AUTHORIZING THE STATE HIGHWAY COMMISSION TO LEASE UNUSED—
—PORTIONS OF INTERSTATE RIGHTS OF WAY; PROVIDING THAT—
—ACQUISITION OF RIGHTS OF WAY BY STATE HIGHWAY COMMISSION—
—INCLUDES THE RIGHT TO USE OR DISPOSE OF GRAVEL OR OTHER—
—ROAD BUILDING MATERIALS LOCATED WITHIN SUCH RIGHTS OF WAY;
—REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HEREWITH;
—AND PROVIDING THAT THIS ACT BE IN FULL FORCE AND EFFECT—
—FROM AND AFTER ITS PASSAGE AND APPROVAL.

—BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE —
—OF MONTANA:—

—Section 1. That section 32-1615 of the Revised Codes —
—of Montana, 1947, be amended to read as follows:—

—"Section 32-1615. Rights of way, and other properties,

how procured. The state highway commission shall have the power and authority to lay out, alter, construct, improve and and maintain highways in the state of Montana.

Notwithstanding any other provision of law, the state highway commission shall have the power and authority to acquire, by purchase or any other lawful manner, either in fee or in any lesser estate or interest, any lands or other real property, excluding oil, gas and mineral rights, which it deems reasonably necessary for present or future state highway purposes. The acquisition of such lands or real property, or interest therein, for such purposes includes, but is not limited to, that which is deemed reasonably necessary by the state highway commission, for any of the following purposes:

(a) For rights of way, including those necessary for state highways within cities.

(b) For the purposes of exchanging the same for other real property to be used for rights of way or other purposes authorized herein, provided that the same shall not be acquired for such a purpose by condemnation procedures.

(c) For deposits of road building materials for reasonably foreseeable future road building purposes and uses, including rock, gravel, sand or earth; provided however that the right of eminent domain shall not be available for the acquisition of any such deposits of road building materials which may then constitute a component part of an existing private business enterprise.

(d) For offices, weighing stations, shops or storage yards, buildings, rest areas, informational sites or communication facilities.

(e) Parks adjoining or near any state highway,
provided that the same shall not be acquired for such a
purpose by condemnation procedures.

(f) For the culture and support of trees or shrubs
which benefit any state highway by aiding in the maintenance
and preservation of the roadbed.

(g) For drainage in connection with any state highway.

(h) For the maintenance of any unobstructed view of any
portion of a state highway so as to promote the safety of
the traveling public.

(i) For the construction and maintenance of stock lanes
or trails.

(j) For the construction and maintenance or replacement
of private or public irrigation systems, private or public
drainage systems, or natural water or drainage courses made
necessary by highway construction.

(k) For providing land or other real property easements
or rights of way for necessary relocation of existing
utilities, utility easements or other easements for facilities
or purposes then in place, or in effect, upon a proposed
right of way.

Whenever it shall be deemed necessary by the commission
to secure lands or other real property, or rights therein,
as herein provided, and the same cannot be acquired by
purchase at a price or cost which is deemed reasonable by the
commission, the commission may direct the attorney general
or any county attorney in any county in the state to procure
the lands or other real property by proceedings to be
instituted in the manner as provided in sections 93-9901 to
93-9926 against all nonaccepting landholders.

The commission may not so direct the attorney general
or any county attorney to procure rights of way, easements,
lands or other real property as hereinbefore provided,
unless the commission first adopts a resolution declaring
that public interest and necessity require the construction
or completion by the state, of the highway or improvement,
for one of the purposes set forth in this section, and that
the rights of way, easements, lands or other real property,
or interest therein, described in such resolution and sought
to be condemned is necessary for the improvement and that the
same is planned and located in a manner which will be most
compatible with the greatest public good and the least
private injury.

Such resolution of the commission shall create and
establish a disputable presumption of the public necessity
of such proposed public improvement; that the taking of such
rights of way, easements, lands or other real property or
interest therein, and the amount thereof, is necessary
therefor; and that the proposed public improvement is
planned or located in a manner which will be most compatible
with the greatest public good and the least private injury.

Whenever a part of a parcel of land or other real
property is to be taken for state highway purposes and the
remainder is to be left in such shape or condition as to be
of little market value or to give rise to claims or litiga-
tion concerning severance or other damage, the state highway
commission may acquire the whole parcel and sell the remainder
or exchange the same for other property needed for state
highway purposes.

The authority conferred by this chapter to acquire

rights of way, easements, lands or other real property and
interest therein for state highway purposes includes author-
ity to acquire for reasonably foreseeable future needs. The
state highway commission is authorized to lease unused
portions of any lands which are held for state highway
purposes and interstate rights of way which are not presently
needed for highway purposes on such terms and conditions as
the state highway commission may fix and to maintain and care
for such property in order to secure rent therefrom. All
rent so received shall be deposited in the state highway
fund.

The acquisition of any right of way or easement by the
state highway commission for construction, operation, repair,
re-construction, or maintenance of state highways shall
include, among other rights, the right to use, remove,
re-locate, re-distribute or otherwise dispose of any and all
gravel or other road building materials, found or located
within the boundaries of such rights of way or easements and
such gravel or materials shall be deemed real property for
the purposes of this act."

Section 2. All acts and parts of acts in conflict
herewith are hereby repealed.

Section 3. This act shall be in full force and effect
from and after its passage and approval.

Clyde L. Hawk

Speaker of the House

Jim Sabeock

President of the Senate

SENATE SUBSTITUTE FOR HOUSE BILL NO. 135

INTRODUCED BY JUDICIARY COMMITTEE

AN ACT TO AMEND SECTION 32-1615 OF THE REVISED CODES OF MONTANA RELATING TO THE PROCUREMENT OF RIGHTS OF WAY AND OTHER PROPERTIES; SPECIFYING THE PURPOSES FOR WHICH RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY MAY BE ACQUIRED BY THE STATE HIGHWAY COMMISSION; AUTHORIZING THE STATE HIGHWAY COMMISSION TO ACQUIRE RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY BY PURCHASE OR EXCHANGE; AUTHORIZING THE STATE HIGHWAY COMMISSION TO AUTHORIZE PROCEEDINGS IN CONDEMNATION FOR THE ACQUISITION OF RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY, EXCLUDING OIL, GAS AND MINERAL RIGHTS; PROVIDING THAT THE RESOLUTION OF THE STATE HIGHWAY COMMISSION SHALL CREATE A DISPUTABLE PRESUMPTION AS TO THE PUBLIC NECESSITY OF HIGHWAYS AND PROPERTY REQUIRED THEREFOR AND AS TO PROPER PLANNING AND LOCATION OF STATE HIGHWAYS; PROVIDING FOR THE ACQUISITION OF RIGHTS OF WAY, EASEMENTS, LANDS OR OTHER REAL PROPERTY FOR PRESENT OR REASONABLY FORSEEABLE FUTURE HIGHWAY NEEDS; AUTHORIZING THE STATE HIGHWAY COMMISSION TO LEASE UNUSED PORTIONS OF INTERSTATE RIGHTS OF WAY; PROVIDING THAT ACQUISITION OF RIGHTS OF WAY BY STATE HIGHWAY COMMISSION INCLUDES THE RIGHT TO USE OR DISPOSE OF GRAVEL OR OTHER ROAD BUILDING MATERIALS LOCATED WITHIN SUCH RIGHTS OF WAY; REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HERewith; AND PROVIDING THAT THIS ACT BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE AND APPROVAL.

I hereby certify that the within
Bill originated in the House.

STATE OF MONTANA
DEPARTMENT OF SECRETARY OF STATE

FILED

March 7 1961

AT 10:45 O'CLOCK A M

Frank Murray
SECRETARY OF STATE

BY _____
DEPUTY

George Howard
Chief Clerk

This bill was received by
the Governor this 1st day
of March 1961

Samuel B. Jordan
Governor
Private Secretary

Approved March 6 1961
Ronald L. Fetter
Governor

fifty-four hundred dollars (\$5,400.00), and in cities of the first class having a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons according to the last federal census, the annual salary and compensation must not exceed fifty-one hundred dollars (\$5,100.00); and the annual salary and compensation of city attorneys in all other cities of the first class must not exceed four thousand five hundred dollars (\$4,500.00), and in cities of the second class must not exceed three thousand dollars (\$3,000.00), and in cities of the third class must not exceed one thousand eight hundred dollars (\$1,800.00), which compensation shall be in full for all services rendered in any capacity, and no fee, percentage or additional compensation must be given to or allowed him."

Amending clause.

Section 5. That section 11-731 of the Revised Codes of Montana, 1947, as amended, be, and the same is hereby amended to read as follows:

Salary of
city or
town clerk.

"11-731. (5025) **Salary of city or town clerk.** The annual salary and compensation of the city or town clerk must be fixed by ordinance, and in cities with a population of more than fifty thousand (50,000) persons, according to the last federal census, shall be not more than six thousand four hundred dollars (\$6,400.00); in cities with a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons, according to the last federal census, the annual salary and compensation must not exceed six thousand dollars (\$6,000.00); in cities of the first class with a population of less than twenty-five thousand (25,000) persons, according to said census, must not exceed five thousand four hundred dollars (\$5,400.00); in cities of the second class the annual salary and compensation must not exceed four thousand two hundred dollars (\$4,200.00). In cities of the third class the compensation must not exceed two thousand seven hundred dollars (\$2,700.00), and in towns must not exceed one thousand eight hundred dollars (\$1,800.00); provided, however, that nothing in this section shall be held or construed as applying to cities and towns operating under the commission form of government."

Repealing clause.

Section 6. All acts and parts of acts in conflict herewith are hereby repealed.

Section 7. This act shall be in full force and effect from and after its passage and approval.

Approved March 6, 1961.

CHAPTER 180

An Act to Amend Section 32-1615 of the Revised Codes of Montana Relating to the Procurement of Rights of Way and Other Properties; Specifying the Purposes for Which Rights of Way, Easements, Lands or Other Real Property May be Acquired by the State Highway Commission; Authorizing the State Highway Commission to Acquire Rights of Way, Easements, Lands or Other Real Property by Purchase or Exchange; Authorizing the State Highway Commission to Authorize Proceedings in Condemnation for the Acquisition of Rights of Way, Easements, Lands or Other Real Property, Excluding Oil, Gas and Mineral Rights; Providing That the Resolution of the State Highway Commission Shall Create a Disputable Presumption as to the Public Necessity of Highways and Property Required Therefor and As to Proper Planning and Location of State Highways; Providing for the Acquisition of Rights of Way, Easements, Lands or Other Real Property for Present or Reasonably Foreseeable Future Highway Needs; Authorizing the State Highway Commission to Lease Unused Portions of Interstate Rights of Way; Providing That Acquisition of Rights of Way by State Highway Commission Includes the Right to Use or Dispose of Gravel or Other Road Building Materials Located Within Such Rights of Way; Repealing All Acts and Parts of Acts in Conflict Herewith; and Providing That This Act be in Full Force and Effect From and After Its Passage and Approval.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That section 32-1615 of the Revised Codes of Montana, 1947, be amended to read as follows: Amending clause.

"Section 32-1615. **Rights of way, and other properties, how procured.** The state highway commission shall have the power and authority to lay out, alter, construct, improve and maintain highways in the State of Montana.

Authority of
state highway
commission
to acquire land.

Notwithstanding any other provision of law, the state highway commission shall have the power and authority to acquire, by purchase or any other lawful manner, either in fee or in any lesser estate or interest, any lands or other real property, excluding oil, gas and mineral rights, which it deems reasonably necessary for present or future state highway purposes. The acquisition of such lands or real property, or interest therein, for such purposes includes, but is not limited to, that which is deemed reasonably necessary by the state highway commission, for any of the following purposes:

Rights of way.

(a) For rights of way, including those necessary for state highways within cities.

Exchange land.

(b) For the purposes of exchanging the same for other real property to be used for rights of way or other purposes authorized herein, provided that the same shall not be acquired for such a purpose by condemnation procedures.

Deposit
of material.

(c) For deposits of road building materials for reasonably foreseeable future road building purposes and uses, including rock, gravel, sand or earth; provided however that the right of eminent domain shall not be available for the acquisition of any such deposits of road building materials which may then constitute a component part of an existing private business enterprise.

Buildings
and facilities.

(d) For offices, weighing stations, shops or storage yards, buildings, rest areas, informational sites or communication facilities.

Parks.

(e) Parks adjoining or near any state highway, provided that the same shall not be acquired for such a purpose by condemnation procedures.

Trees and shrubs.

(f) For the culture and support of trees or shrubs which benefit any state highway by aiding in the maintenance and preservation of the roadbed.

Drainage.

(g) For drainage in connection with any state highway.

View.

(h) For the maintenance of any unobstructed view of any portion of a state highway so as to promote the safety of the traveling public.

Stock trails.

(i) For the construction and maintenance of stock lanes or trails.

(j) For the construction and maintenance or replacement of private or public irrigation systems, private or public drainage systems, or natural water or drainage courses made necessary by highway construction.

Irrigation
and drainage.

(k) For providing land or other real property easements or rights of way for necessary relocation of existing utilities, utility easements or other easements for facilities or purposes then in place, or in effect, upon a proposed right of way.

Easements.

Whenever it shall be deemed necessary by the commission to secure lands or other real property, or rights therein, as herein provided, and the same cannot be acquired by purchase at a price or cost which is deemed reasonable by the commission, the commission may direct the attorney general or any county attorney in any county in the state to procure the lands or other real property by proceedings to be instituted in the manner as provided in sections 93-9901 to 93-9926 against all nonaccepting landholders.

Proceedings
against
non-accepting
landholders.

The commission may not so direct the attorney general or any county attorney to procure rights of way, easements, lands or other real property as hereinbefore provided, unless the commission first adopts a resolution declaring that public interest and necessity require the construction or completion by the state, of the highway or improvement, for one of the purposes set forth in this section, and that the rights of way, easements, lands or other real property, or interest therein, described in such resolution and sought to be condemned is necessary for the improvement and that the same is planned and located in a manner which will be most compatible with the greatest public good and the least private injury.

Resolution
of interest
and necessity.

Such resolution of the commission shall create and establish a disputable presumption of the public necessity of such proposed public improvement; that the taking of such rights of way, easements, lands or other real property or interest therein, and the amount thereof, is necessary therefor; and that the proposed public improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

Presumption.

Whenever a part of a parcel of land or other real property is to be taken for state highway purposes and the re-

Whole parcel may
be acquired—
when.

mainder is to be left in such shape or condition as to be of little market value or to give rise to claims or litigation concerning severance or other damage, the state highway commission may acquire the whole parcel and sell the remainder or exchange the same for other property needed for state highway purposes.

The authority conferred by this chapter to acquire rights of way, easements, lands or other real property and interest therein for state highway purposes includes authority to acquire for reasonably foreseeable future needs. The state highway commission is authorized to lease unused portions of any lands which are held for state highway purposes and interstate rights of way which are not presently needed for highway purposes on such terms and conditions as the state highway commission may fix and to maintain and care for such property in order to secure rent therefrom. All rent so received shall be deposited in the state highway fund.

Authority
to lease
unused land.

Disposition
of rent.

Rights included
in acquisition.

The acquisition of any right of way or easement by the state highway commission for construction, operation, repair, re-construction, or maintenance of state highways shall include, among other rights, the right to use, remove, re-locate, re-distribute or otherwise dispose of any and all gravel or other road building materials, found or located within the boundaries of such rights of way or easements and such gravel or materials shall be deemed real property for the purposes of this act."

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Effective
immediately.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 6, 1961.

CHAPTER 181

An Act to Amend Section 68-1316 of Replacement Volume 4, Revised Codes of Montana, 1947, Authorizing State Employees Paid Either Fully or in Part From Federal Funds, and Not Subject to the Federal Retirement System, to Become Members of the Public Em-

ployees' Retirement System of the State of Montana; Providing All Employees of the Montana Army and Air National Guard to Become Members on the First Day of Employment Except Employees in State Service on July 1, 1961, or Prior Thereto Who Have Filed an Election Not to Become Members; Providing That Employees Who Have Filed Their Election Not to Become Members May Become Members at Any Time While an Employee by Filing an Election to Become a Member and Receive Credit for Prior Service Under the Provisions of Section 68-501 (h), Revised Codes of Montana, 1947, as Amended by Chapter 92, Session Laws of 1955; Providing for an Effective Date of This Act; and Containing a Repealing Clause.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That section 68-1316 of Replacement Volume 4, Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Amending clause.

"68-1316. State employees paid from federal funds.

(a) A state employee whose compensation is paid either fully or in part from federal funds, but who is not subject to the federal retirement system, shall be entitled to all benefits and be required to make all employee contributions under the public employees' retirement system of the State of Montana, based upon the full salary received by such employee, including that portion of salary paid from federal funds.

State employees
paid from
federal funds—
rights under
retirement
system.

"(b) From and after July 1, 1961, all employees of the Montana army and air national guard shall become members on the first day of employment, except those employees who are in state service on July 1, 1961, or prior thereto, who have filed with the board of administration an election not to become members, provided any person so excluded from membership by his own election may at any time, while he is an employee, file with the board of administration an election to become a member and receive credit for prior service under the provisions of section 68-501 (h), replacement volume 4, Revised Codes of Montana, 1947, as amended by chapter 92, session laws of 1955, of this act."

Election as to
membership.

Section 2. This act shall be in full force and effect from and after its passage and approval.

Effective
immediately.